

BEFORE THE FISH AND WILDLIFE COMMISSION  
OF THE STATE OF MONTANA

In the matter of the amendment of            ) NOTICE OF AMENDMENT  
ARM 12.9.1301, 12.9.1302,                    )  
12.9.1303, 12.9.1304, and 12.9.1305       )  
regarding gray wolf management            )

TO: All Concerned Persons

1. On October 31, 2013, the Fish and Wildlife Commission (commission) published MAR Notice No. 12-401 pertaining to the proposed amendment of the above-stated rules at page 1886 of the 2013 Montana Administrative Register, Issue Number 20.

2. The commission has amended ARM 12.9.1301 and 12.9.1304 as proposed.

3. The commission has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

12.9.1302 DEFINITIONS The following definitions apply to this subchapter:

(1) through (3) remain as proposed.

(4) "Breeding pair" means an adult male and an adult female wolf and with at least two pups ~~that survived until on~~ December 31 ~~of the year of their birth, during the previous breeding season~~ as referenced in the Montana Gray Wolf Conservation and Management Plan.

(5) "Confirms", "confirmed", or "confirmation" means an incident where the department or USDA Wildlife Services determines through a field investigation of dead or injured livestock that there is reasonable physical evidence that the animal was actually attacked and/or killed by a wolf. The primary confirmation would ordinarily be the presence of bite marks and associated subcutaneous hemorrhaging and tissue damage, indicating that the attack occurred while the victim was alive, as opposed to simply feeding on an already dead animal. Spacing between canine tooth punctures, feeding pattern on the carcass, fresh tracks, scat, hairs rubbed off on fences or brush, and/or eyewitness accounts of the attack may help identify the specific species or individual responsible for the depredation. Predation might also be confirmed in the absence of bite marks and associated hemorrhaging (i.e., if much of the carcass has already been consumed by the predator or scavengers) if there is other physical evidence to confirm predation on the live animal. This might include blood spilled or sprayed at a nearby attack site or other evidence of an attack or struggle. There may also be nearby remains of other victims for which there is still sufficient evidence to confirm predation, allowing reasonable inference of confirmed predation on the animal that has been largely consumed.

(6) through (11) remain as proposed.

(12) "Potential threat" means those wolves in immediate proximity to human dwellings, livestock, or domestic dogs.

(12) through (14) remain as proposed but are renumbered (13) through (15).

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1303 CONTROL METHODS OF THE GRAY WOLF INCLUDE NONLETHAL AND LETHAL MEANS (1) through (3) remain as proposed.

(4) Control of the gray wolf by an agency or an individual may include nonlethal and lethal actions. Specific control actions shall connect in both time and location to a wolf or wolves with the highest likelihood of having injured or killed the livestock.

(5) and (6) remain as proposed.

AUTH: 87-1-201, 87-1-301, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

12.9.1305 ALLOWABLE LETHAL CONTROL OF THE GRAY WOLF

(1) The commission delegates its authority to the department to authorize lethal control of problem wolves. The department may authorize the following to conduct lethal control of problem wolves:

(a) the department;  
(b) USDA Wildlife Services pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;

(c) Department of Livestock pursuant to an interagency cooperative agreement that outlines the procedures for verifying the needs for lethal control and as part of a coordinated agency response;

(d) ~~control by~~ a livestock owner, immediate family member, employee, or other person authorized by the department with a permit issued by the department under the conditions authorized and specified on the permit;

(e) control to protect human safety; or

(f) control pursuant to 87-1-901, MCA.

(2) through (8) remain as proposed.

(9) The permit must specify:

(a) its duration and expiration date;

(b) total number of wolves that may be lawfully killed through the combined actions of the individuals named on the permit or other department authorization and the department or USDA Wildlife Services;

(c) the geographic area where the permit is valid; and

(d) ~~that wolves may be killed using means of take authorized by the commission for wolf harvest seasons~~ from the ground and in a manner that does not entail the use of intentional live or dead baits, scents, or attractants or deliberate use of traps or snares, or poisons; or use of radio telemetry equipment.

(10) remains as proposed.

(11) A landowner or landowner agent, pursuant to 87-1-901, MCA, may take a wolf on the landowner's property without permit or license when the wolf is a potential threat as defined in ARM 12.9.1302 ~~to human safety, livestock, or domestic dog~~ until the quota established by the commission under 87-1-901, MCA, is met.

(b) and (c) remain as proposed but are renumbered (a) and (b).

AUTH: 87-1-201, 87-1-301, 87-1-901, 87-5-105, 87-5-110, 87-5-131, MCA

IMP: 87-1-201, 87-1-301, 87-1-901, 87-5-102, 87-5-103, 87-5-104, 87-5-105, 87-5-108, 87-5-131, MCA

4. The commission received a total of 1383 comments. The commission has thoroughly considered the comments received, and the commission's responses are as follows:

The department has thoroughly considered the comments and testimony received. 1383 duplicate and unique comments were tallied during the comment period in addition to relatively limited testimony received during public hearings. Many of the comments repeated common themes and inputs and many others did not directly speak to the proposed ARM amendments. A general summary of comments and the department's responses are as follows:

Comment 1: Multiple comments advocated retaining original language in ARM 12.9.1302 pertaining to wolf numbers, distribution, dispersal, genetic diversity, consideration of disease, and quotas because it is helpful to keep them visible to the public.

Response 1: Given the commission and department's responsibility and authority to manage all Montana wildlife in perpetuity, the amendments do not in any way prevent consideration or use of these elements in wolf management. Additionally, the general language does not preclude other potential elements that are not specifically enumerated.

Comment 2: Several comments identified opposition to taking a wolf without clear evidence of livestock depredation.

Response 2: The authority for a landowner to take a wolf under SB 200 (2013) does not require direct evidence of livestock depredation.

Comment 3: Multiple comments expressed agreement with the additional authority for landowners to take wolves.

Response 3: The additional authority provided in SB 200 is in effect.

Comment 4: Several comments advocated management of wolves should support healthy ecosystems including the relationship with prey.

Response 4: Montana currently enjoys and benefits from relatively intact ecosystems and the commission and department have long recognized the value of ecosystem integrity. Management plans and conservation strategies evaluate variables including range from habitat to interactions with other species.

Comment 5: There were multiple comments advocating protecting the wolf and requested the killing of wolves be prohibited.

Response 5: This is outside the scope of this rulemaking. State law provides for the harvest of wolves and provides a means of protecting humans, livestock, and domestic dogs.

Comment 6: There were several comments opposing the reintroduction of wolves and delisting of wolf and grizzly bear.

Response 6: The wolf has already been reintroduced and is currently delisted by federal law. Grizzly bear management is outside the scope of this process.

Comment 7: Several comments stated wolves that are alive provide an economical benefit.

Response 7: The department and commission recognize the economic aspects to its wildlife populations through nonconsumptive uses.

Comment 8: Multiple comments addressed the need for a clearer definition of potential threat in ARM 12.9.1305(11)(a).

Response 8: The commission has adopted a definition for potential threat in ARM 12.9.1302.

Comment 9: Multiple comments advocated further expanded authority for landowners to take wolves.

Response 9: Any expanded authority must be allowed in state law and is outside this rulemaking.

Comment 10: Multiple comments expressed concern regarding the removal of the quota language in ARM 12.9.1301.

Response 10: Quotas remain an option for the commission's consideration and implementation but not the only management tool.

Comment 11: One comment expressed concern regarding the tracking of harvest because there is no proper notification system.

Response 11: Landowners are required to report any take of wolves under SB 200.

Comment 12: Several comments stated Montana should treat wolves as a predator or like a coyote.

Response 12: There is no authority to reclassify wolves.

Comment 13: Several comments addressed the protection of the identity of landowners who take wolves under these ARM rules.

Response 13: The department and commission have no authority to keep public information from anyone who requests it.

Comment 14: Several comments stated confirming livestock loss or injury is the responsibility of USDA Wildlife Services and not the department.

Response 14: The proposed amendments do not require the department to confirm dead or injured livestock nor do they remove USDA Wildlife Services from their assigned task.

Comment 15: Several comments stated the taking of wolves under the authority of SB 200 is inconsistent with other statutory authority that allows take of wolves that are attacking, killing, or threatening to kill a person or livestock or a domestic dog.

Response 15: SB 200 establishes authority for landowners to take wolves representing a potential threat and is in addition to existing authority to take wolves that are attacking or killing.

Comment 16: Multiple comments advocated no change to the definition of breeding pair because the language matches the language found within the final federal delisting rule.

Response 16: The commission adopted the definition that is consistent with language within Montana's Gray Wolf Conservation and Management Plan as approved by the U.S. Fish and Wildlife Service.

Comment 17: A few comments specifically supported changing "hunting" to "harvest" in light of current trapping opportunities.

Response 17: The amendments clarify the availability of trapping as a management tool.

Comment 18: Multiple comments opposed striking language that describes response to wolf conflicts on a case by case basis to target those wolves most likely involved in the depredation. Several comments supported striking the language.

Response 18: The commission adopted language to maintain the element of appropriately targeted wolf removals.

Comment 19: For clarity, one comment opposed striking "to undertake control actions" in ARM 12.9.1303.

Response 19: The language of ARM 12.9.1303 still includes the language "to undertake control actions."

Comment 20: One comment identified awkward language in ARM 12.9.1305(1)(d).

Response 20: The commission clarified the language.

Comment 21: One comment advocated restoring "and when the department or USDA Wildlife Services confirms wolves are routinely present on the property or allotment and present a significant ongoing risk to livestock" in ARM 12.9.1305.

Response 21: Confirmation of wolf presence is not required to authorize targeted lethal removal in response to confirmed livestock loss by wolves.

Comment 22: One comment addressed clarifying when and how the quota for this new authority in SB 200 shall be set.

Response 22: The quota will be set using existing commission process that already includes public review and comment. Specific details of any quota will be addressed via that process.

Comment 23: One comment specifically advocated adding "The state of Montana recognizes and confirms gray wolf recovery has been achieved" in ARM 12.9.1301.

Response 23: This is outside the scope of rulemaking.

Comment 24: One comment specifically advocated adding language restating Montana's prohibition against harassment of hunters and trappers in legal pursuit of wolves.

Response 24: The prohibition on harassment of hunters and trappers is clearly stated within statute and does not require additional statement here.

Comment 25: Several comments requested the language regarding the means of take in ARM 12.9.1305(9)(d) not be removed.

Response 25: The commission adopted ARM 12.9.1305(9)(d) with the language restored.

Comment 26: Several comments requested restoring the language in ARM 12.9.1302 describing how USDA Wildlife Services will confirm wolf depredation.

Response 26: The commission adopted ARM 12.9.1302 with the language restored.

Comment 27: One comment opposed replacing "assure" with "ensure."

Response 27: This edit was suggested by the Attorney General office as a matter of standardization. The department does not believe either word significantly changes intent.

Comment 28: One comment expressed concern and frustration over accidental harvest of a domestic dog by a wolf hunter.

Response 28: While this circumstance was unfortunate and deeply emotional, it is outside the scope of this process.

Comment 29: Several comments advocated that the commission and department should not be relinquishing authority for lethal removal of wolves.

Response 29: State law clarifies the authority for landowners to take wolves.

/s/ Dan Vermillion

Dan Vermillion, Chairman  
Fish and Wildlife Commission

/s/ Rebecca Jakes Dockter

Rebecca Jakes Dockter  
Rule Reviewer

Certified to the Secretary of State April 14, 2014